



JON M. HUNTSMAN, JR.  
Governor

GARY R. HERBERT  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Water Rights

JERRY D. OLDS  
State Engineer/Division Director

Beaver River

## STATE OF UTAH

### DIVISION OF WATER RIGHTS

#### IN THE MATTER OF:

**CLARK W. SMITH, et ux.**  
**PO BOX 787**  
**BEAVER, UT 84713**

**MORGAN CARTER FARMS**  
**PO BOX 817**  
**BEAVER, UT 84713**

#### Respondents

#### CONTROL STRUCTURE AND MEASURING DEVICE NOTICE

SEAA NO. 1288

DISTRIBUTION ACCOUNTS: 100139 &  
100072

WATER RIGHTS: 77-744, 77-745,  
77-746, 77-1005, 77-1006

### I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

*(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, except as provided by Subsection (4), shall construct or install and maintain controlling works and a measuring device at:*

- (a) each location where water is diverted from a source; and*
- (b) any other location required by the state engineer.*

*(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.*

*(3) The state engineer shall approve the design of:*

- (a) the measuring device; and*
- (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works.*

*(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:*

- (a) forbid the use of water until the user complies with the state engineer's requirement; and*
- (b) commence enforcement proceedings authorized by Section 73-2-25.*



SCANNED

December 3, 2008

Subject: Control Structure and Measuring Device Notice

## II. STATEMENT OF FACTS

1. The Respondents are the water users under the captioned distribution accounts and owners of the captioned water rights. Water under said rights is distributed to the Respondents through a diversion on North Creek into Carter Ditch at a point in the SW corner, Sec 17, T 29S, R 7W, SLBM.
2. Ron Roberts, water commissioner, has indicated he is unable to regulate and measure the flows at the Respondents' diversion because of the lack of a control structure and measuring device. In order for the Commissioner to properly administer the delivery of water to the Respondents, the conditions of the Respondents' facilities require corrective action.

## III. ACTIONS REQUIRED

1. The Respondents are hereby notified that the Respondents' facilities **must be equipped with a functional and accurate measuring device and lockable headgate or control structure** in a manner that will provide the Commissioner an ability to fully control the diversion of water and to securely lock the headgate in place.
2. Prior to commencing the required work and during the construction and repairs, the Respondents shall consult with the Commissioner to assure that the planned improvements will satisfy the requirements of this Notice.
3. The area surrounding the Respondents' facilities is to be made sufficiently clear of vegetation to allow reasonable access and observation by the Commissioner. If access to the facilities is restricted the Commissioner must be provided keys.
4. The Respondents' facilities are to be perpetually maintained in good working order as described above.
5. **The required work must be completed and the Commissioner notified of said completion no later than April 1, 2009.**

## IV. ADDITIONAL AGENCY ACTION

1. The Respondents are encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondents have complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).

SCANNED

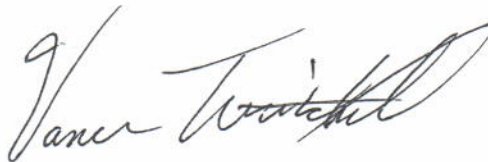
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3. If an Order forbidding the use of water is issued and is violated by the Respondents, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation of an Order, the Respondents may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation.

Thank you for your cooperation in attending to this matter in a timely manner. If you have any questions concerning this notice, please contact me by phone at 801-538-7374 or by e-mail at [VanceTwitchell@Utah.gov](mailto:VanceTwitchell@Utah.gov) or Kurt Vest, Regional Engineer, by phone at 435-586-4231 or by e-mail at [KurtVest@Utah.gov](mailto:KurtVest@Utah.gov). Ron Roberts, Water Commissioner, may be contacted by phone at 435-438-2473.

Dated this 3<sup>rd</sup> day of December, 2008



Vance Twitchell  
Distribution Engineer

cc: Kurt Vest, Regional Engineer  
Kerry Carpenter, Enforcement Engineer  
Ron Roberts, Water Commissioner  
Steven Gale, Deputy Water Commissioner

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CERTIFICATE OF MAILING

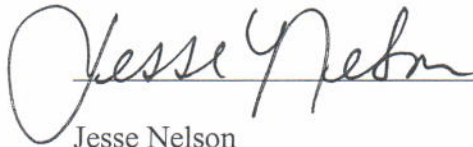
I, the undersigned, certify that on this 3<sup>rd</sup> day of December, 2008, I mailed a copy of the foregoing Notice by certified U.S. Mail to the following:

**CLARK W. SMITH, et ux.**

**PO BOX 787  
BEAVER, UT 84713**

**MORGAN CARTER FARMS**

**PO BOX 817  
BEAVER, UT 84713**

A handwritten signature in dark ink, appearing to read "Jesse Nelson", is written over a horizontal line.

Jesse Nelson  
Division of Water Rights  
Field Services Secretary

SCANNED  
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